

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
OPEX SOLUTIONS, INC.
FOR
TOTAL PRODUCTIVE MAINTENANCE TRAINING & FACILITATION
FOR THE AUSTIN WATER TREATMENT PROGRAM AREA
CONTRACT NUMBER MA 2200 NA190000032**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and OPEX Solutions, Inc. ("Contractor"), having offices at PO Box 5663, Round Rock, TX 78683.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Martin Nazareth, Phone: (512) 551-8406 x 101, Email Address: mnazareth@opexsolutions.org. The City's Contract Manager for the engagement shall be Darrell Richmond, Phone: (512) 972-0313, Email Address: Darrell.richmond@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the tasks outlined in the Contractor's Proposal, Exhibit A, Scope of Work.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$300,000 for the initial contract term and amount not-to-exceed \$100,000 for each extension option, for a total not-to-exceed amount of \$500,000 for the total contract term, for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water
Attn:	Accounts Payable
Address	625 East 10 th Street
City, State, Zip Code	Austin TX 78701

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate

Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 Administrative. The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 Travel Expenses. All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 Final Payment and Close-Out.

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 Term of Contract. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of thirty-six (36) months. The Contract may be extended beyond the initial term for up to two (2) additional twelve (12)-month periods at the City's sole option.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.2 Right To Assurance. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 Default. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

OR

PURInsuranceCompliance@austintexas.gov

5.1.1.8 The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** The Contractor shall provide coverage, at a minimum limit of \$250,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but

not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire

agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.6.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Kim Larsen, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

OPEX Solutions, Inc.

ATTN: Martin Nazareth, Contract Manager

PO Box 5663

Round Rock, TX 78683

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist

with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the City, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Scope of Work, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

OPEX Solutions, Inc.

By: _____

Signature

Name: _____

Printed Name

Title: _____

Date: _____

CITY OF AUSTIN

By: _____

Signature

Name: _____

Printed Name

Title: Purchasing Manager

Date: _____

List of Exhibits

Exhibit A	OPEX Solutions, Inc. proposal and rate sheet
Exhibit B	Non-Discrimination Certification
Exhibit C	Non-Suspension or Debarment Certification



Proposal

FOR

Austin Water Total Productive Maintenance

Original Proposal Date: October 04, 2017

Resubmitted With No Changes: July 11, 2018

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I. AW REQUIREMENTS, SPECIFICATIONS AND QUALIFICATIONS

A. Requirements & Specifications – TPM-Autonomous Maintenance (TPM-AM):

We understand that it is Austin Water’s intent to solicit TPM training, facilitation and coaching for AW Treatment Program Leaders and Practitioners as follows:

1. Purpose:
 - 1.1. TPM training and project implementation shall be provided in a designated WTP, WWTP or field operations’ facility
 - 1.2. Course curriculum shall be developed using expert analysis resulting in well-defined objectives that are relevant to current industry needs
 - 1.2.1. Effective integration of language, illustrations, supplementary materials, and logical presentation sequence such that each student/participant leaves with skills to do the job
 - 1.2.2. Provide training manuals for each student
 - 1.2.3. Initial TPM projects shall provide learners with hands-on experience of TPM processes and techniques to effectively transfer and apply TPM for use in future projects
2. Scheduling training and coaching sessions shall be based on the availability of AW staff
 - 2.1. Instructor/facilitator will provide available dates and AW Treatment management will determine the date and time
 - 2.2. Course availability shall be Monday – Friday between 7:00 a.m. and 10:00 p.m.
 - 2.3. Location for the training shall be at a City of Austin facility determined by AW Treatment management
 - 2.4. Approximate class size for training sessions will be between 8 – 15 students
3. Classroom training shall include the following:
 - 3.1. Definition and overview of TPM
 - 3.2. Understanding the importance of TPM and how it will benefit AW
 - 3.3. Levels of TPM implementation
 - 3.4. Planning and preparing for TPM Levels 1 – 3
 - 3.5. Understanding the development and importance of Cleaning, Lubrication & Inspection (CLI) standards
 - 3.6. Overview, planning & preparation for initial TPM project (initial cleaning, inspection, tagging & tracking of equipment problem conditions)
 - 3.7. Classroom debrief of initial project and identification and discussion of lessons learned

- 3.8. Leader training to support, manage & sustain TPM program implementation
- 4. TPM Initial Project exercise shall include:
 - 4.1. Initial project planning and preparation
 - 4.2. Discussion of safe workplace practices and appropriate PPE
 - 4.3. Initial project team assignments
 - 4.4. Hands-on application of TPM methods on designated equipment
 - 4.5. Identification, resolution and tracking of maintenance repair tags
 - 4.6. Classroom debrief of project and identification and discussion of lessons learned
- 5. TPM Team Follow-up Coaching & Facilitation shall include:
 - 5.1. Coordination & scheduling of Coaching & Support session with plant staff and Treatment management
 - 5.2. Assessment of TPM teams' progress to date
 - 5.3. Identification of problems or concerns with implementation of TPM team activities
 - 5.4. Coaching TPM teams on problem-solving with TPM methods on designated equipment
 - 5.5. Facilitation of action plans to address identified issues
- 6. Coaching for AW TPM Program Managers and Program Leadership
 - 6.1. TPM Program Managers
 - 6.1.1. Selection of equipment based on asset criticality
 - 6.1.2. Developing metrics for the TPM program and tracking the desired outcome
 - 6.1.3. Developing progress reports
 - 6.1.4. Job transition as TPM progresses
 - 6.2. TPM Executive Leadership
 - 6.2.1. Identifying the direction and developing execution plans
 - 6.2.2. Presenting progress reports and recommendations

B. Requirements & Specifications – TPM-Asset Reliability Excellence (AREX)

- 1) Training
 - a) Provide one half-day Asset Management & Equipment Reliability overview for Leaders per plant
 - i) Operations Manager
 - ii) Divisional Manager
 - iii) Plant Superintendents
 - iv) Maintenance Managers
 - v) Maintenance Supervisor
 - vi) Plant INFOR support

- vii) Facilities Engineer
- viii) Process Engineer
- b) Provide four days of Asset Management & Equipment Reliability training for Practitioners per plant to maintenance crews, operations crews, maintenance managers and supervisors
- 2) Review and provide feedback on equipment criticality matrix working with and coaching a AM&ER team at Austin Water.
 - a) Review current AW developed criticality rating criteria.
 - b) Review the work done by AW on ranking of critical assets per the criticality ratings
- 3) Support and coaching to improve plant maintenance system
 - a) Coach activity of reviewing and revise PM requirements for most critical equipment based on available equipment failure data and other maintenance/operations information
 - b) Coach activity of reviewing current PMs and checking for under-specified and over-specified and specify who should be doing the PM
 - c) Coach to identify and add new items that were not originally included as PMs
 - d) Coach planning and scheduling maintenance activity and work execution to improve wrench-time
 - e) Coach to review, identify, define and report appropriate metrics for maintenance and reliability

C. Instructor/facilitator qualifications

- 4) Each instructor/facilitator shall have sufficient field experience to provide a real-world perspective in the classroom and hands-on field pilot projects
- 5) Ability to effectively communicate that knowledge to students/participants
- 6) Shall be articulate, resourceful, organized, patient, sensitive to students' needs
- 7) Dedicated to providing an extraordinary learning experience

D. Administrative requirements

- 1) Vendor shall coordinate with Treatment Management on planning training/consulting dates
- 2) Invoicing Requirements
 - a) The vendor shall submit an invoice within 10 calendar days after delivering training or coaching. Invoice shall include, but is not limited to, the following:
 - i) Contractor's name, on a professionally pre-printed form
 - ii) Contractor's address and phone number
 - iii) City's contract number/purchase order number
 - iv) Date of training/follow-up support session

II. OSI APPROACH TO MEET AW REQUIREMENTS FOR TPM-AM

Per the Requirements, Specifications and Qualifications received on August 10, 2017 and clarification of expectations, OSI proposes to conduct the following:

1. Training:

- A. All AW plants starting with TPM will have a 3-day dedicated training session with up to 10 top management staff and a few practitioner level staff to attend the first two days (*see Appendix A for course details*)
- B. Each AW plant will have 2-day sessions of dedicated training to ensure all the operators and maintenance staff are trained (*see Appendix A for course details*)
- C. Training includes a fixed cost based on the number of days of training and a variable cost based on the number of attendees (*see “OpEx Solutions’ Rates” below*)
- D. Each attendee is provided with a 3-day or 2-day TPM training manual and a completion certificate
- E. OSI combines each in-class training with a hands-on exercise on AW’s equipment which helps AW progress on the TPM journey

2. Coaching/Support

TPM team follow up coaching and facilitation. As requested by AW, OSI will provide two primary levels of coaching and facilitation:

A. Coaching for AW TPM Program Leadership

- i. In order to ensure continuous alignment with AW objectives and initiatives and to provide the required direction and support, OSI will coach and facilitate a Leadership Team (Steering Committee). The purpose is to provide support, direction, prioritization, approvals and recognition. OSI recommends that this team meets at least on a quarterly basis.
- ii. OSI recommends a regular cadence of support, at a minimum, quarterly for the TPM Steering Committee, however, OSI will manage with a semi-annual cadence — Steering Committee support/coaching activities by OSI (*Figure 1*)



- Provide expert guidance on developing TPM goals aligned with strategic AW goals
- Reinforce leadership level training points for the steering committee
- Help cascade strategic goals to the divisions and plants
- Be the bridge between the Steering Committee and the Core Team to provide direction and approvals
- Review performance and facilitate feedback on prioritization and eliminating obstacles
- Coaching to challenge status quo
- Provide recognition for performance, progress and cost avoidance
- Ensure tactical matters do not creep into the steering committee

Figure 1. Steering Committee Support Activities

B. Coaching for AW TPM Program Managers and Program Leadership

- i. In order to ensure the leadership direction is converted to executable plans and to provide feedback to leadership, OSI will coach and facilitate a TPM Program Managers Team (Core Team). This team will set clear expectations, define minimum requirements, set review and audit cadence, recommend metrics and provide status reports to leadership and the steering committee
- ii. OSI recommends a regular cadence of support, at a minimum, monthly for the TPM Core Team, however, OSI will manage with a bimonthly cadence — support/coaching activities by OSI (*Figure 2*)

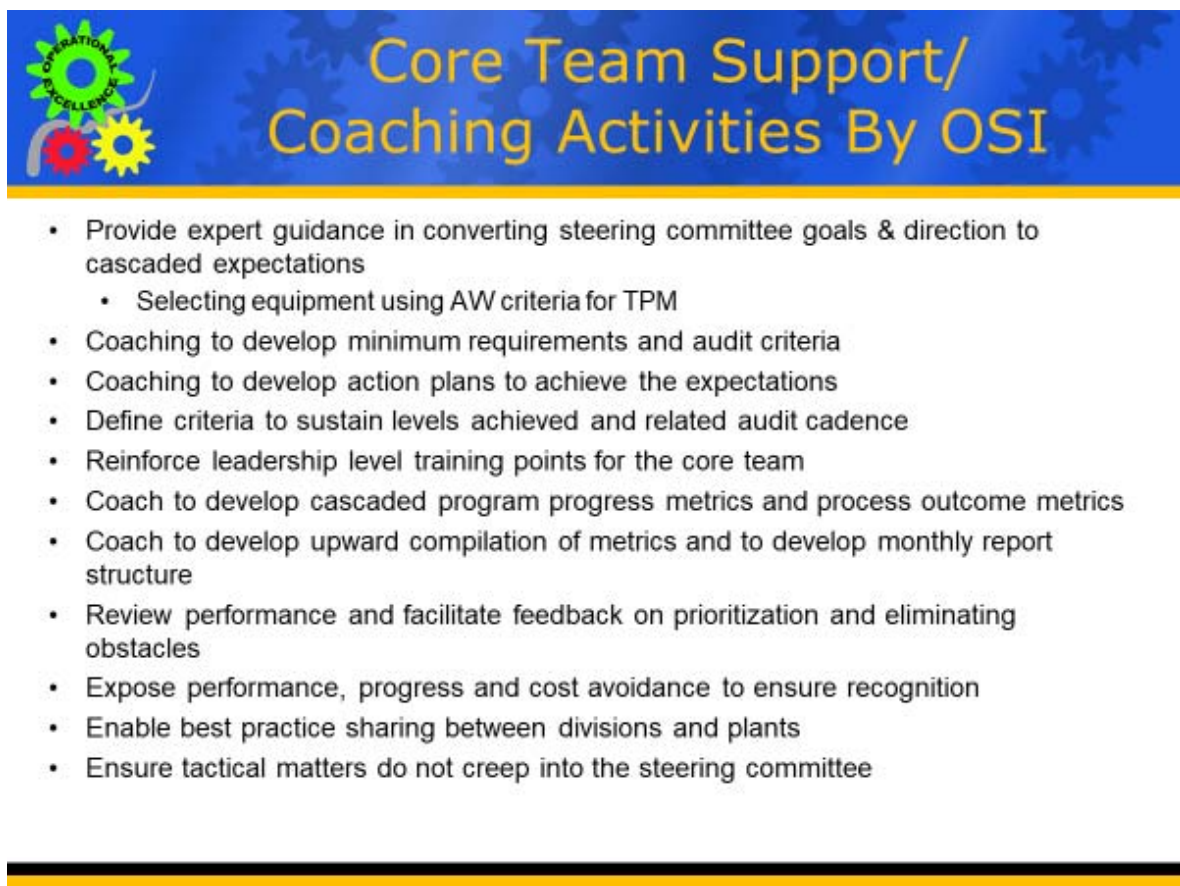


Figure 2 Core Team Support Activities

C. Coaching for operations and maintenance practitioners

- i. One-day events will be facilitated to induct additional equipment into the program and are included in the support sessions
- ii. In contrast to many organizations that perform event-based TPM activity, OSI uses a 7-step approach (*Figure 3*) which enables continuous engagement and ownership of operators with a true partnership with maintenance staff.



Figure 3. Levels of Autonomous Maintenance

- iii. The approach OSI uses integrates the different components of TPM — Autonomous Maintenance (AM), reliability and asset management (*Figure 4*)

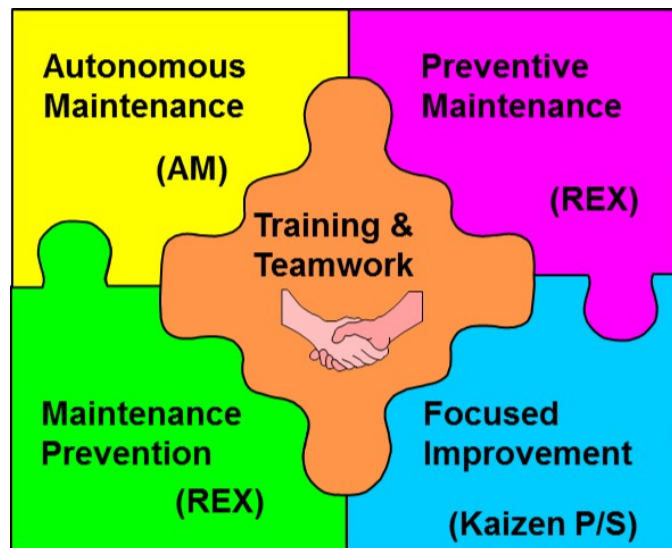


Figure 4. Alignment between different aspects of TPM

- iv. TPM Team Support & Coaching Key Expectations (*Figure 5*)

Coaching Expectations

- Reinforce training & learning – program progress metrics
- Coaching activities to ensure progress – program progress metrics
- Facilitating introduction of new equipment in the TPM program
- Process metrics based on the team, equipment & plant
 - Operator engagement
 - Early problem detection and cost avoidance
 - Reduction in operation cost
 - Maintenance cost reduction
 - Improving available capacity
 - Improving delivered capacity
 - Reducing breakdowns, accidents and defects
- Note: actual accomplishment depends on:
 - Operator engagement
 - Continuity of coaching on regular cadence
 - Leadership support

Figure 5. Support/Coaching Activities Expectations

- v. OSI recommends regular cadence of support, at a minimum, half day a month for each TPM team — Monthly plant support/coaching activities by OSI (*Figure 6*)



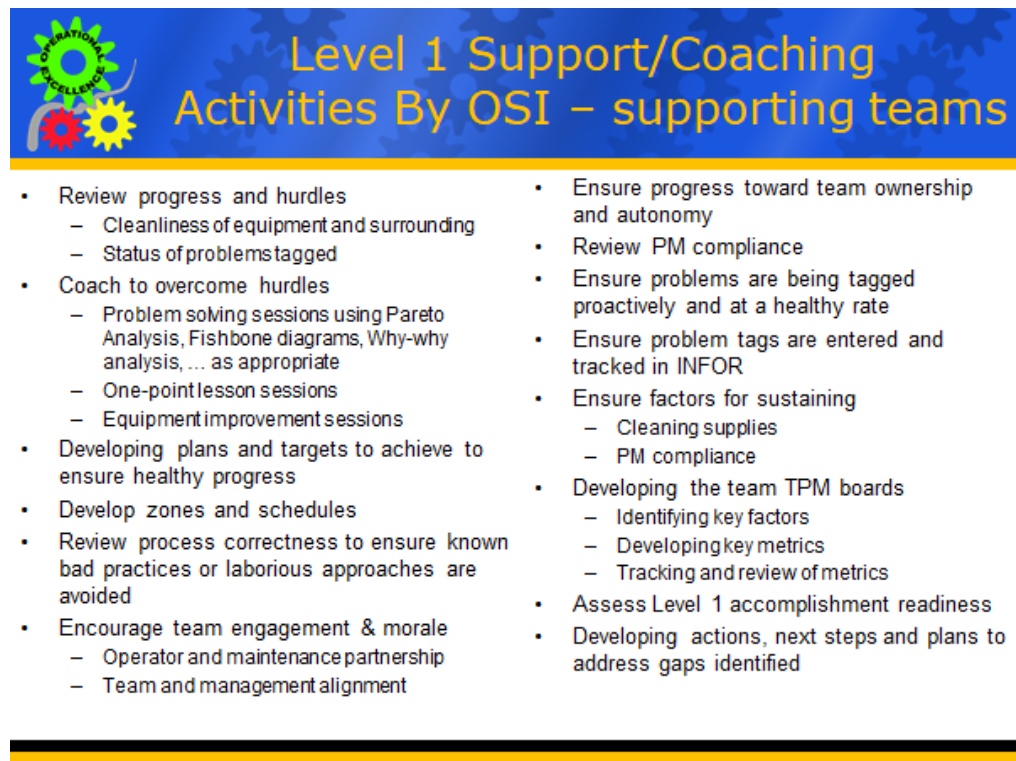
Figure 6. Monthly Plant Support/Coaching Activities

- vi. OSI will define and use the audit criteria to ensure the teams carry out the activities per set guidelines to advance through the TPM journey in a structured way
- (1) Initially, audits at each site will be conducted by OSI and a management representative
 - (2) As each site progresses with maturity, a site audit team will be formed and coached
 - (3) This approach will be followed for each level and each location/plant

vii. Typical expectations by TPM levels (Levels 1 – 3 per requirement)

(1) Level 1 Expectations (*Figure 7*):

- (a) Equipment clean
- (b) Problems identified and addressed
- (c) TPM team is engaged
- (d) Leadership and management support is visible
- (e) CMMS is used for tracking asset problems
- (f) Initiate the TPM board
- (g) Identify key metrics
- (h) System initiated to ensure supplies

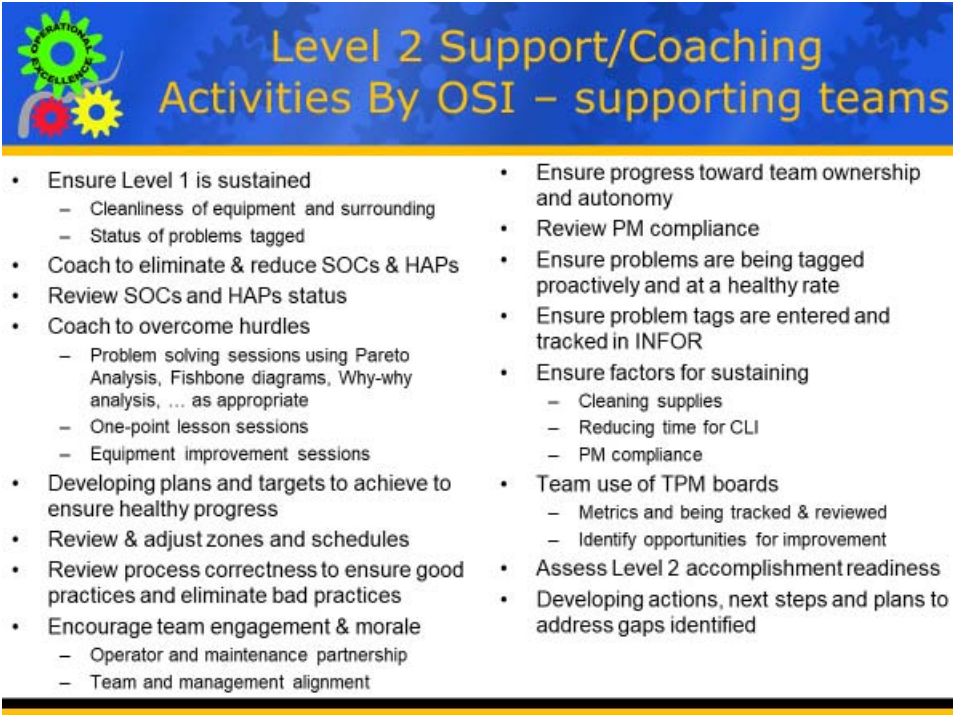


Level 1 Support/Coaching Activities By OSI – supporting teams

- Review progress and hurdles
 - Cleanliness of equipment and surrounding
 - Status of problem tagged
- Coach to overcome hurdles
 - Problem solving sessions using Pareto Analysis, Fishbone diagrams, Why-why analysis, ... as appropriate
 - One-point lesson sessions
 - Equipment improvement sessions
- Developing plans and targets to achieve to ensure healthy progress
- Develop zones and schedules
- Review process correctness to ensure known bad practices or laborious approaches are avoided
- Encourage team engagement & morale
 - Operator and maintenance partnership
 - Team and management alignment
- Ensure progress toward team ownership and autonomy
- Review PM compliance
- Ensure problems are being tagged proactively and at a healthy rate
- Ensure problem tags are entered and tracked in INFOR
- Ensure factors for sustaining
 - Cleaning supplies
 - PM compliance
- Developing the team TPM boards
 - Identifying key factors
 - Developing key metrics
 - Tracking and review of metrics
- Assess Level 1 accomplishment readiness
- Developing actions, next steps and plans to address gaps identified

Figure 7. Level 1 Support/Coaching Activities

- (2) Level 2 Expectations (*Figure 8*):
- (a) Equipment continues to be clean
 - (b) SOC's and HAP's are addressed
 - (c) Improve equipment care
 - (d) Continue to use CMMS
 - (e) Continue to use TPM board
 - (f) Develop metrics' calculations
 - (g) Improved system to ensure supplies
 - (h) Teams are able to develop OPL's




The figure is a slide titled "Level 2 Support/Coaching Activities By OSI – supporting teams". It features a blue header with a yellow border and a logo on the left consisting of three interlocking gears (green, yellow, and red) with the text "OPERATIONAL EXCELLENCE" around them. The main content is a list of activities organized into two columns.

<ul style="list-style-type: none">• Ensure Level 1 is sustained<ul style="list-style-type: none">– Cleanliness of equipment and surrounding– Status of problems tagged• Coach to eliminate & reduce SOC's & HAP's• Review SOC's and HAP's status• Coach to overcome hurdles<ul style="list-style-type: none">– Problem solving sessions using Pareto Analysis, Fishbone diagrams, Why-why analysis, ... as appropriate– One-point lesson sessions– Equipment improvement sessions• Developing plans and targets to achieve to ensure healthy progress• Review & adjust zones and schedules• Review process correctness to ensure good practices and eliminate bad practices• Encourage team engagement & morale<ul style="list-style-type: none">– Operator and maintenance partnership– Team and management alignment	<ul style="list-style-type: none">• Ensure progress toward team ownership and autonomy• Review PM compliance• Ensure problems are being tagged proactively and at a healthy rate• Ensure problem tags are entered and tracked in INFOR• Ensure factors for sustaining<ul style="list-style-type: none">– Cleaning supplies– Reducing time for CLI– PM compliance• Team use of TPM boards<ul style="list-style-type: none">– Metrics and being tracked & reviewed– Identify opportunities for improvement• Assess Level 2 accomplishment readiness• Developing actions, next steps and plans to address gaps identified
---	--

Figure 8. Level 2 Support/Coaching Activities

- (3) Level 3 Expectations (*Figure 9*):
- (a) Equipment continues to be clean
 - (b) SOC's and HAP's are addressed
 - (c) Improve equipment care
 - (d) Continue to use CMMS
 - (e) Continue to use TPM board
 - (f) Metrics' tracking is established
 - (g) System to ensure supplies is standardized
 - (h) CLI points, frequency, method and quantity are specified
 - (i) Initial CLI standards are developed and followed
 - (j) Reduced frequency of support is required



Level 3 Support/Coaching Activities By OSI – supporting teams

<ul style="list-style-type: none"> Ensure Level 1 & 2 are sustained <ul style="list-style-type: none"> – Cleanliness of equipment and surrounding – Status of problems tagged Identify and map process & equipment key factors to develop standards Ensure knowledge transfer from other teams Develop standards using good practices Coach to overcome hurdles <ul style="list-style-type: none"> – Problem solving sessions using Pareto Analysis, Fishbone diagrams, Why-why analysis, ... as appropriate – One-point lesson sessions – Equipment improvement sessions Developing plans and targets to achieve to ensure healthy progress Review & adjust zones and schedules Encourage team engagement & morale <ul style="list-style-type: none"> – Operator and maintenance partnership – Team and management alignment 	<ul style="list-style-type: none"> Ensure progress toward team ownership and autonomy Review PM compliance Ensure problems are being tagged proactively and at a healthy rate Ensure problem tags are entered and tracked in INFOR Ensure factors for sustaining <ul style="list-style-type: none"> – Cleaning supplies – Reducing time for CLI – Tag generation & completion – PM compliance Team use of TPM boards <ul style="list-style-type: none"> – Metrics and being tracked & reviewed – Review metrics in relation to goals – Identify opportunities for improvement Assess Level 3 accomplishment readiness Developing actions, next steps and plans to address gaps identified
---	--

Figure 9. Level 3 Support/Coaching Activities

III. OSI APPROACH TO MEET AW REQUIREMENTS FOR AREX

Per the Requirements, Specifications and Qualifications received on August 10, 2017 and clarification of expectations, OSI proposes to conduct the following:

3. Training:

- A. Each year there will be a half-day dedicated AREXL (for Leaders) overview session with up to 10 top management staff including Operations Manager, Divisional Manager, Plant Superintendents, Maintenance Managers, INFOR support, Facilities Engineer and Process Engineer – Key Topics:
 - i. TPM & Reliability Excellence Philosophy
 - ii. Reliability Excellence Business Case
 - iii. Developing the Reliability Excellence Strategy
 - iv. Developing the Deployment Plan
- B. Each AW plant will have four days of dedicated AREXP (for Practitioners) training to ensure all the plant maintenance crews, supervisors and managers are trained — Key Topics & Learning Objectives:
 - i. Topics:
 - (1) TPM & Reliability Excellence Philosophy
 - (2) Reliability Excellence Business Case
 - (3) Developing the Reliability Excellence Strategy
 - (4) Developing the Deployment Plan
 - (5) Process Reliability Excellence Metrics
 - (6) TPM Activity Board
 - ii. Learning Objectives:
 - (1) TPM & Reliability excellence
 - (2) Key asset management issues
 - (3) Defining the business case for reliability excellence
 - (4) Pitfalls in asset management & reliability excellence
 - (5) Rippling effects of poor asset management
 - (6) Developing an effective management structure
 - (7) Maintenance & operations partnership charters
 - (8) Correlation between equipment reliability & safety
 - (9) Spare parts management
 - (10) Developing the deployment plan
 - (11) Reliability excellence plan execution

(12) Metrics for effective execution

- C. OSI combines each in-class training with exercises appropriate for the level (Leader or Practitioner) which helps AW progress on the TPM-AREX journey
- D. Each attendee is provided with a AREX training manual and a completion certificate
- E. AREXL overview and AREXP training will be provided using two instructors due to the breadth of knowledge and the compressed timing required to provide this training
- F. Training includes a fixed cost based on the number of consultant days of training and a variable cost based on the number of attendees (*see “OpEx Solutions’ Rates” below*)

4. Coaching/Support

TPM team follow up coaching and facilitation. As requested by AW, OSI will provide two primary levels of coaching and facilitation:

- A. Coaching for AW TPM Program Leadership and Management – combined with TPM-AM, see section II-2-A&B
- B. Coaching for maintenance practitioners
 - i. The approach OSI uses integrates the different components of TPM — Autonomous Maintenance (AM), reliability and asset management (*Figure 10*)



Figure 10. Alignment between different aspects of TPM

- C. TPM-AREX Team Support & Coaching Key Activities — OSI recommends regular cadence of support, at a minimum, half day a month for each TPM-AREX team
- i. This coaching complements what is included in TPM-AM
 - (1) Identifying, defining and developing report structure of additional metrics for TPM-AREX
 - ii. Identify gaps based on benchmark values (*Figure 11*)
 - iii. Review equipment criticality in the system aligns with plant reality
 - iv. Review Preventive Maintenance (PM) tasks on critical equipment for (*Figure 12*)
 - (1) Adequacy or needing revision
 - (2) Reduction or elimination
 - (3) Elevation to predictive maintenance
 - v. Planned Maintenance schedule compliance review and improvement
 - (1) Review effectiveness of planning, scheduling and execution
 - (2) Use of visual management for planning and scheduling
 - (3) Coach using techniques to plan and prepare so as to improve wrench time
 - (4) Strategies to increase ratio of planned to breakdown maintenance
 - vi. Review spare parts strategy for optimization of risk vs. cost
 - vii. Coach using FMEA based thinking to manage risk and reinforce the need to capture data accurately
 - viii. Coaching to relate TPM-AREX activities to drive:
 - (1) Extending the useful life of equipment
 - (2) Improving the actual capacity of equipment to its design capacity
 - (3) Improving safe operation and maintenance activities

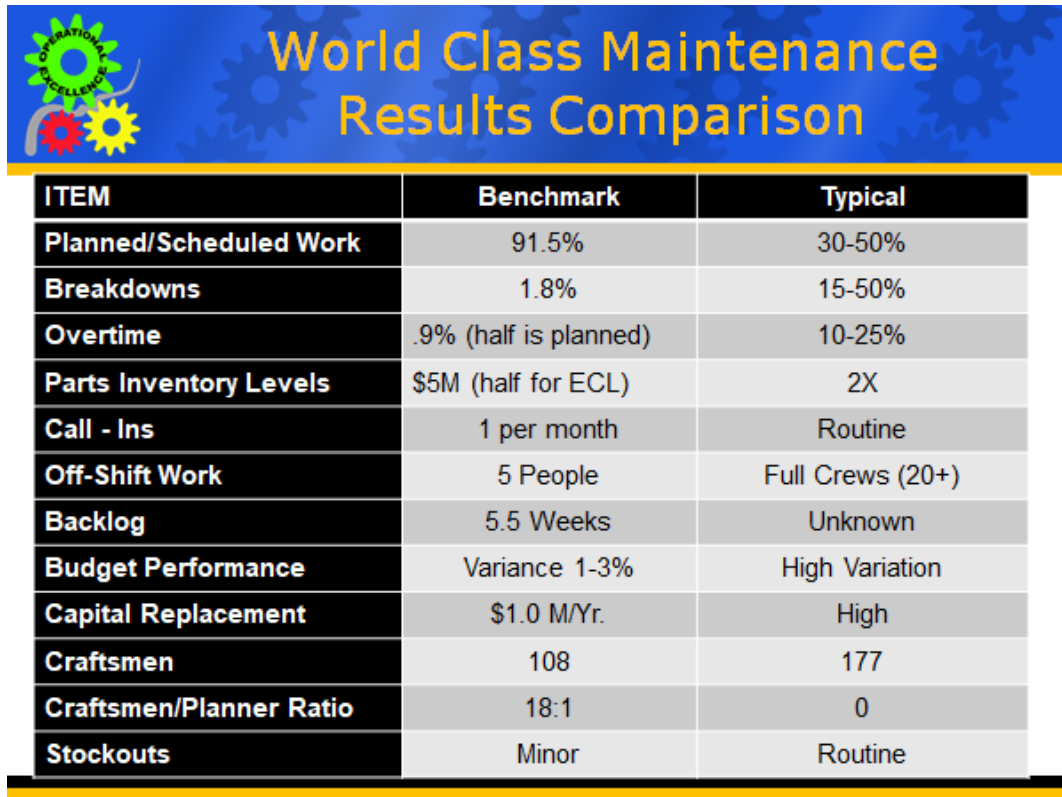


Figure 11. Benchmark Metrics for TPM-AREX

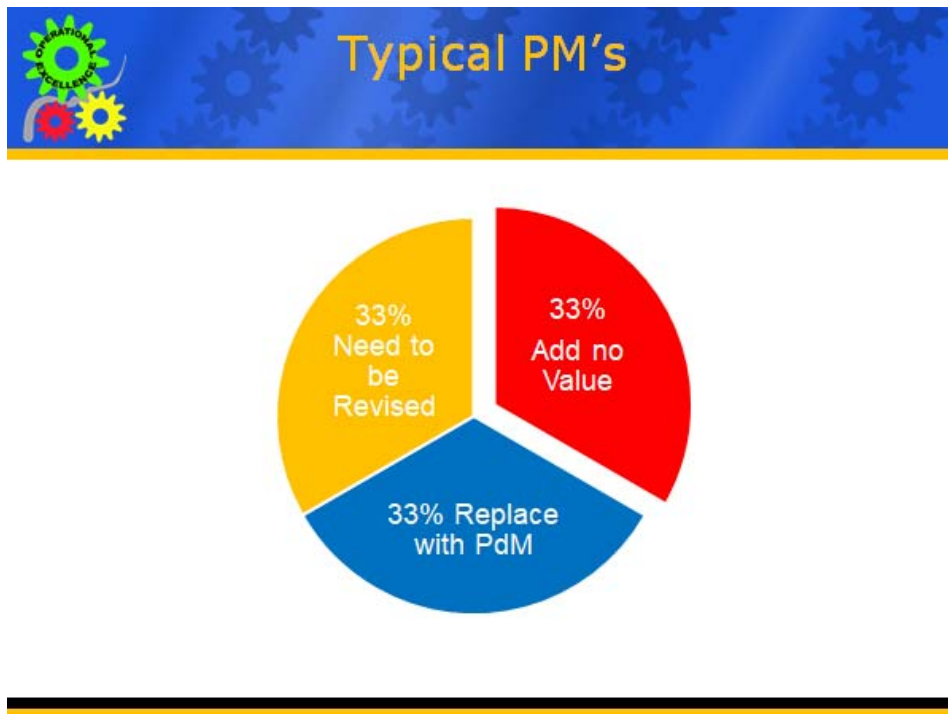


Figure 12. PM Improvement Opportunity Through TPM-AREX

IV. ANNUAL TRAINING & COACHING/SUPPORT PLANS

The AW leadership recommendation is to initiate the TPM program more comprehensively by adding Asset Reliability Excellence to complement the TPM-Autonomous Maintenance.

Annual plans for the next three years based on an AW suggested cap of 40 consulting days per year are included in *Appendix A*. These plans are based on the following assumptions:

- Four teams each of operators and maintenance per plant
- Each team needs half day per month of coaching at a minimum
- Plant support need will reduce in the subsequent years as the maturity grows — the support may be adjusted when AW decides to add plants into the program

V. OSI PROPOSED TEAM

(Curricula Vitae in Appendix B)

1. Primary Team
 - A. Martin Nazareth, Principal Consultant and Project Lead – Based in Austin, TX
 - B. Warren Gary Johnson, Jr., P.E., Principal Consultant – Based in Rockdale, TX
2. Backup (onboarding to ensure seamless transition)
 - A. Kenneth McClymonds, P.E., Principal Consultant — Based in Conroe, TX
 - B. John Gay, Principal Consultant — Based in Birmingham, AL

VI. OPEX SOLUTIONS' RATES

Time & Material Rate Based

Session	Fixed Daily Rate	COC Member Discount (only with active membership)	Fixed Daily Rate After Discount	Program Mgt. & Admin. (20%) Daily	Total Daily Rate	Variable Cost for Training Per Participant Per Day
Training	\$2,500	\$250	\$2,250	\$450	\$2,700	\$40
Coaching & Support	\$2,500	\$250	\$2,250	\$450	\$2,700	N/A

Travel Expenses: Travel expenses to be reimbursed per City of Austin travel guidelines

OSI helps prepare the coordination and reports for the TPM training events conducted by OSI — covered under Program Management and Administration.

Payment Terms

OSI will invoice AW on a monthly basis for the services provided and Payment term to be net 30 days based on the date of the invoice.

VII. TERM OF CONTRACT

The term of agreement as informed by AW will be for a three-year period with provisions for two additional year extensions.

A. Service Support

OSI offers phone support up to 30 days beyond the project at no cost to the customer. In many cases this includes the customer needs due to change in personnel. However, OSI will not provide on-site support at no cost beyond the project closedown or beyond the project scope.

B. Quality Assurance

OSI is measured by:

- A customer satisfaction survey at the end of the service. This includes all the target groups from the Units, which emphasizes the need to satisfy all involved and thereby make the project a success.
- Each training session is evaluated with feedback forms.
- OSI also tracks on-time and within-budget execution of projects.

C. Miscellaneous

If requested by the City, OSI will provide a quote for additional services or benefits not identified in this document at the rates shown in Section VI. OPEX SOLUTIONS' RATES. Additional services will be provided only upon written approval from AW.

Additional benefits offered by OSI that are typically not offered by other organizations:

- Membership to the CenTex OpEx Consortium will allow AW to benefit from a membership discount up to twice the amount of membership fee with an exception for Level 4 membership where the discount has no limit. However, a special concession is offered to allow AW to benefit from the membership discount up to three times the amount of the membership fee — this is due to the AW long-term membership (Charter Member) of three years.
- OSI is an approved Registered Education Provider for PMI and participants in some of the training sessions may be able to earn PDUs.
- Most of OSI's associates are within driving distance from AW, hence, travel costs will be low and based on City of Austin guidelines.

VIII. ASSUMPTIONS

- OSI assumes that office space and conference room will be provided to execute this project
- All meetings, workshops, and sessions performed for data gathering, analysis, and reporting will be performed at the AW sites

- All consulting and coaching sessions are scheduled in one-day increments. Any consulting and coaching sessions which are ½-day events will be combined with another activity whenever possible to make a full-day event. If it is not possible to combine a ½-day event with another activity, OSI will add a 20% surcharge for the ½-day event.

APPENDIX A

AWU 2017-18 TPM Training and Support Plan																
Key Activity	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total Days	Status/Comments		
AREX Training																
AREX Overview for Leaders	1												1	Schedule Flexible		
SAR AREX for Practitioners								4					4	Schedule Flexible		
WN AREX for Practitioners								4					4	Schedule Flexible		
Plant TPM-AMSupport																
SAR (0.5 days/team/2 months)		1	1		1		1		1		1		6			
WN (0.5 days/team/2 months)		1		1		1		1		1		1	6			
Plant AREX Support																
SAR (1 day /month)						1	1	1	1	1	1	1	7			
WN (1 day/month)						1	1	1	1	1	1	1	7			
Leadership Support																
Core Team	0.5		0.5		0.5		0.5		0.5		0.5		3			
Steering Committee	4x0.5 days												2			
Total Consulting Days													40			
Key:	Plan:			Actual:			Off Plan:									

AWU 2018-19 TPM Training and Support Plan																	
Key Activity	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total Days	Status/Comments			
AREX Training																	
AREX for Practitioners				4										4	Schedule Flexible		
AREX Overview for Leaders	1												1	Schedule Flexible			
Plant TPM-AMSupport																	
SAR (0.5 days/team/2 months)			1		1		1		1		1		5				
WN (0.5 days/team/2 months)		1		1		1		1		1			5				
Plant AREX Support																	
SAR (1 day /month)		1	1	1	1	1	1	1	1	1	1		10				
WN (1 day/month)		1	1	1	1	1	1	1	1	1	1		10				
Leadership Support																	
Core Team	0.5		0.5		0.5		0.5		0.5		0.5		3				
Steering Committee	4x0.5 days												2				
Total Consulting Days													40				
Key:	Plan:			Actual:			Off Plan:										

Exhibit A
Austin Water TPM & Asset Management-Maintenance Excellence

AWU 2019-20 TPM Training and Support Plan															
Key Activity	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total Days	Status/Comments	
AREX Training															
AREX for Practitioners				4									4	Schedule Flexible	
AREX Overview for Leaders	1												1	Schedule Flexible	
Plant TPM-AMSupport															
SAR (0.5 days/team/2 months)			1		1		1		1		1		5		
WN (0.5 days/team/2 months)		1		1		1		1		1			5		
Plant AREX Support															
SAR (1 day /month)		1	1	1	1	1	1	1	1	1	1		10		
WN (1 day/month)		1	1	1	1	1	1	1	1	1	1		10		
Leadership Support															
Core Team	0.5		0.5		0.5		0.5		0.5		0.5		3		
Steering Committee	4x0.5 days												2		
Total Consulting Days													40		
Key:	Plan:			Actual:			Off Plan:								

APPENDIX B



MARTIN D. NAZARETH, PMP

MSIE — SUNY at Buffalo, NY

MSIE&M — NITIE, Mumbai, India

BSME — Mysore University, Mysore, India

Project Management Professional (PMP)

Industry Advisory Board Member, Institute of Industrial Engineers (IIE)

OpEx Solutions, Inc. — Round Rock, TX
President/Founder: 2009 – Present

- Formed the company with two divisions: Global OpEx Solutions and CenTex OpEx Consortium
- Implemented systems to ensure Lean operations with satisfied clients
- Developed a strong clientele including Fortune 500 companies within a short period of time
- Provide training/workshop sessions with an excellent feedback rating of over 4.7/5.0

Alcoa Inc., Global Primary Products, — Knoxville, TN
Senior Manager- ABS: 2005 – 2009

- Led the Global Autonomous Maintenance & 5S Initiative for Global Primary Products
 - Implemented 95% of an aggressive plan and growth of 25% more equipment each year
 - Sustained the initiative through several organizational, structural and senior leadership changes
 - Led the OEE Dashboard development to link and track savings to OEE
 - Conducted several training sessions from leadership to operators
- Jointly led the Alcoa Business System (ABS) and Focus Plant initiative for Global Primary Metals
 - Supported two plants directly with respect to ABS
 - Conducted kaizens to integrate key ABS tools to enhance effectiveness and reduce redundancy
 - Coordinated and taught three Alcoa University ABS training sessions
 - Participated in Manufacturing Analysis and the Strategic MA initiative along with McKinsey
 - Participated in operational excellence audits as special auditor

Delphi Automotive Systems — Lockport, NY
Customer Quality Manager (Supervisor): 1998 – 2005

- Managed NA Program Quality for future programs from new business to launch (\$1B sales/yr.)
 - Supervised four customer quality managers to cover all Thermal & Interior advanced programs
 - Achieved flawless launches in program and project management using Six Sigma tools
 - Developed and coordinated reliability/durability test planning to drive robust engineering
 - Conducted benchmarking for future products using the JD Power metrics
- Subject Matter Expert — Failure Modes and Effects Analysis (FMEA) and Process Control Plan
 - Co-authored Delphi FMEA training manual and conducted training globally

Electronic Data Systems (EDS) — Lockport, NY
Advanced Manufacturing Systems Engineer, Consultant to Delphi Thermal: 1994 – 1998

- Led the Labeling Initiative and developed common systems
- Developed sales proposals for integrated plant floor monitoring/control and shipping systems
- Participated in developing a product line to reduce cost & lead time and increase sales (2M sales/yr.)
- Implemented real-time SPC using GageTalker quality system resulting in reduced oil cooler rejects

OpEx Solutions, Inc. • PO Box 5663 • Round Rock, TX 78683
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mnazareth@opexsolutions.org



WARREN GARY JOHNSON, Jr., P.E.

BSME — The University of Texas at Austin

Registered Professional Engineer

Certified Maintenance and Reliability Professional

Alcoa, Inc. — Knoxville, TN

Primary Metals Global Reliability & Maintenance Manager: 2000–2007

Led Global Primary Metals Asset Reliability Team — 32 Locations

- 19 sub teams
- Founding member of Alcoa Corporate Reliability Lead Team
- Led numerous reliability benchmarking visits outside of Alcoa
- Developed Alcoa Maintenance 101 and 201 training books
- Led team to develop a global reliability strategy
- Selected consultants to help implement reliability strategy
- Published paper on "3 Waves to Reliability Excellence"
- Made numerous reliability excellence presentations at conferences including Society of Maintenance and Reliability Professionals (SMRP); International Maintenance Conference (IMC); Productivity, Inc.; Noria; University of Tennessee; Marcon; and Clemson
- Led Alcoa Primary Metals Global Reliability Rollout in improving plant reliability which resulted in more than \$60M savings to date

Technology, Quality and Alcoa Business System Superintendent: 1995–2000

- Operating plan development/deployment/tracking
- Developed in control and capable tracking
- Developed charts for tracking plant KPI's
- Developed/achieved ISO certification—Rockdale smelter & ingot
- Four business unit: Leader—Maintenance Steering Team—EMPAC maintenance management system development and deployment
- Instituted Rockdale operations public tours and beautification project
- Coordinated Rockdale operations strike contingency plans
- Rockdale Fall Prevention Team - Leader

Mine Maintenance & Engineering Superintendent: 1988–1995

- 1988 takeover from Texas Utilities
- Hired new workforce — new contract
- Improved planning & scheduling
- Instituted predictive maintenance on B.E. 2570 walking draglines
- Developed process for vibration analysis dragline D.C. motors
- MSHA Holmes National Safety Award for most safe surface mine in U.S.
- Alcoa merit award for dragline design improvement savings of 1.2 m/yr
- Developed system for real time asset utilization monitoring
- Improved reliability of draglines & rolling stock to benchmark levels

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KEN McCLYMONDS, P.E.

MBA — Shippensburg University, Shippensburg, PA

BSE cum laude — Geneva College, Beaver Falls, PA

Registered Professional Engineer

Certified Master Trainer for TQM (now recognized as Six Sigma Master Black Belt)

Certified Master Trainer for TQS (now recognized as Lean Manufacturing Master Black Belt)

Certified Facilitator for Total Quality Maturity Measurement of Total Quality Cultural Evolution

OpEx Solutions, Inc. — Round Rock, TX
Principal Consultant: 20012–Present

- Guided changes that more than doubled the output of a manufacturing plant in Canada
- Developed in-class training for Product Development Process Excellence, Advanced Process Excellence and numerous operational improvement classes
- Saved a client from having to do 100% quality inspection by data gathering and analyzing statistical quality data
- Cut client production time by around 30% by performing time and motion study and helping them implement my recommended changes

Roper Industries — Houston, TX

Global Vice President, Engineering — AMOT Division: 2009–2012

Global Vice President, Marketing & Aftermarket Sales & Service — Petroleum Analyzer Company LP Division: 2007–2009

Global Vice President, Engineering & Product Mgt. — Petroleum Analyzer Company LP Division: 2005–2007

- Led Global Engineering function with staff located in Canada, China, U.K. and U.S.A.
- Implemented best practice processes in Lean product development and new product launch in the first four months.
- Installed global project evaluation and prioritization processes and reduced time-to-market by 63%.
- Reallocated resources from sustaining activity to revenue-generating projects
- them implement my recommended changes
- Led global efforts for service, aftermarket parts sales, marketing and product management. Successfully managed \$42M P&L for the largest business segment
- Produced 20% CAGR for the company
- Implemented value-based list prices improving gross margins by 15%
- Created the strategic planning process for the business
- Reorganized Engineering to align with global business needs in three months
- Rationalized products and implemented processes to prevent unjustified proliferation
- Created lean global engineering processes to leverage the global nature of the business in two months
- Created product management (marketing) processes to focus on growing the business more than 20% annually

Dresser, Inc., On/Off Valve Division — Houston, TX

Global Vice President of Engineering — 2004–2005

- Led 139 Product Engineers in seven sites and four countries to grow the business while increasing Engineering productivity and business profitability
- Led production design and manufacturing shop floor support efforts (i.e. Manufacturing Engineering) worldwide

OpEx Solutions, Inc. • PO Box 5663 • Round Rock, TX 78683

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JOHN P. GAY

BS Chemical Engineering — Georgia Institute of Engineering
APICS Certified Supply Chain Professional
Supply Chain Council SC OR-Professional
DuPont Master Black Belt, Black Belt, Green Belt

DuPont, Corporate Manufacturing Center of Competency — Houston, TX
Supervising Master Black Belt and Global Best Practice Leader for Focused Improvement — 2008–2015 (Retired)

- Group delivering \$1million plus per person every year in hard, validated savings and \$2+ million each in enabled soft savings (\$78million year to mid-2015 from my team of eleven)
- Strong support of corporate Production System implementation, including three Global Best Practice Leaders
- Personal projects include Strategic corporate IT alignment (SAP/APO, Process Monitoring and Control); Supply Chain Development and Optimization (bio-based plastics, food supplement commercialization, cellulosic ethanol commercialization, bio-butanol pilot) and numerous plant operations improvements
- Corporate lean instructor, impacting hundreds of engineers and technicians

DuPont — La Porte, TX
Technical Superintendent — 2007 – 2008

- Technical Superintendent for site landlord, responsible for 14 engineers and chemists delivering Process Safety Management, Management of Change-Personnel and -Technology and deep support to a two-unit operation
- Major project accelerated to meet new environmental permit requirements, defined, installed and started up on-time, on-budget
- Solved major site problem with water effluent quality, put in place standard work and predictive measures
- Solved a long-standing problem of leak detection (environmental consent order) using process measures and binary logistic regression
- Managed through significant turnover in key engineering positions, with no impact to operations or safety

DuPont — Mobile, AL — 1987 – 2007
Unit Technology Leader (guardian) for two units, eleven products
Leader for IT, Sourcing, Crop Protection Business, Shipping, Warehousing, Materials Handling and Technical Support

- Responsible for advancing unit performance and capability, new product introductions, deep support of operations technical personnel and High-Hazard process safety
- Led development of replacement mixing/cooling technology for a fast reaction to solve major quality, rate and yield issues for an intermediate product
- Planned and executed in-sourcing of a key intermediate, transitioning this sole-sourced material during downstream operation, with full biological testing of product efficacy and safety. Protected a \$50million margin product
- Managed implementation of global sourcing (Asia) of key intermediates for sensitive Crop Protection products, meeting all requirements for qualification, including biological testing
- Led a major Process Hazards Review for a multi-product common vent and relief system, breaking an analysis logjam, enabling rational risk assessment and mitigation. Avoided \$millions to replace the systems
- Managed through two reductions in force, using a knowledge-skills-experience system to determine who to release, how to mitigate the risk, and to tailor developmental plans to both individual and business needs

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jgay@opexsolutions.org

Exhibit B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Exhibit B

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20th day of NOVEMBER, 2018

CONTRACTOR
Authorized
Signature

Title

OpEx SOLUTIONS, INC.
[Signature]
PRESIDENT

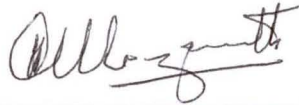
Exhibit C
City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: OpEx SOLUTIONS, INC.

Signature of Officer or
Authorized
Representative:



Date: 11/20/2018

Printed Name:

MARTIN NAZARETH

Title

PRESIDENT



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

DATE: September 5, 2018

DEPT: Austin Water

TO: Purchasing Officer or Designee

FROM: Rick Coronado, Assistant Director, Austin Water

PURCHASING POC: Darrell Richmond

PHONE: 512-972-0313

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- ☐ A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
- ☐ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☒ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: _____

2. Describe this procurement

- What it is for and why it is needed?

This contract will continue and expand the scope of City of Austin Contract # PA160000017 (issued under a Professional Services Certificate of Exemption in 2016) to provide training and consulting services to design and establish an initial Total Productive Maintenance (TPM) program at Austin Water. It is needed to assist Austin Water staff to continue to implement and expand the TPM program to improve the maintenance of critical processing equipment resulting in improved equipment performance, reduced breakdowns, and extended life of the equipment.

- Describe the following (as applicable):

- **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**

- Provide description of the event leading to the procurement and a business justification for this purchase.
 - What would be the impact to department operations and the community if this purchase was not made?
 - How and why this vendor was selected?

- **For Professional, Personal, or Planning Service Exemptions:**

- Why is the vendor the most qualified to provide the services?

OpEx Solutions, Inc. (OSI) is a highly regarded, locally owned and internationally known consulting firm specializing in operational excellence technologies including TPM. OSI has worked with Austin Water since 2014 (pilot) and since 2016 (initial TPM implementation) under City of Austin Contract PA160000017 (issued with a Professional Services Certificate of Exemption). Principal Consultant, Martin Nazareth and Co-consultant Gary Johnson have extensive experience designing and implementing global TPM programs. Mr. Nazareth and Mr. Johnson have worked extensively with Austin Water management and Operations & Maintenance staff over the past 3 years to establish and support TPM teams at Walnut Creek and South Austin Regional Wastewater Treatment Plants. They have formed effective relationships with Austin Water staff through coaching and consulting activities with front-line personnel.

- Does this vendor have a history of working with the City? If so, was it on this particular service?

Yes. OSI has worked with Austin Water since 2014 to provide TPM training and consulting services.

- Will this procurement be component of a larger service or phases of service?

No.

- Is the vendor a City of Austin local vendor?

Yes. The recommended contractor is registered with the city as an MDB.

- Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications?

Yes. 100% minority owned business.

- What qualifications, certifications, or specialized training does the vendor have?

Prior to founding OpEx Solutions, Inc., principal consultant, Martin Nazareth led the global TPM program at Alcoa, Inc. Global Primary Products and has extensive experience in designing and implementing TPM programs for large organizations. He has a Master of Science degree in Industrial Engineering from SUNY at Buffalo, NY, is a certified Project Management Professional and is an Industry Advisory Board Member of the Institute of Industrial Engineers.

Prior to joining OpEx Solutions, Inc., co-consultant Gary Johnson was Global Reliability and Maintenance Manager for Alcoa, Inc. Global Primary Products and led the Global Primary Metals Asset Reliability team responsible for leading Asset Reliability teams at numerous industrial facilities around the world. He has a Bachelor of Science degree in Mechanical Engineering from the University of Texas at Austin, is a registered Professional Engineer, and is a certified Maintenance and Reliability Professional.

- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)?

Loss of contract with OSI could result in TPM program restart with a different vendor, likely causing rework of previously established processes and procedures causing delays in implementation and loss of momentum in the program.

- What other vendors can provide these services and why are they not the best fit for the contract?

There are other consulting firms who provide TPM training however, OSI has worked with Austin Water on design and implementation of the TPM initiative since the original pilot project in 2014. OSI consultants have established relationships with key management and staff and have developed a thorough understanding of Austin Water treatment processes and procedures and they have acquired a working understanding of critical processing equipment and system interconnections. This knowledge and experience makes OSI very effective in providing guidance to Austin Water staff in the implementation of the TPM program.

○ **For Other Exceptions from Chapter 252.022:**

- Explain the circumstances of the procurement.

○ **Prices were determined to be reasonable based on the following (select all that apply):**

- ☐ Prices are established under a current Cooperative contract.

Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.

- ☐ Prices are the same or similar to current City contract.

Notes: At a minimum, note the City of Austin contract number and title.

- ☒ Prices are the same or similar to current contract with another government.

Notes: City of Austin Contract # PA160000017

- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.

Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).

- ☐ Prices are established by law or regulation.

Notes: At a minimum, note the legal or regulatory reference that established the prices.

- ☐ Other means of determining Price Reasonableness.

Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department
procurement description area

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☐ Scope of Work or Statement of Work (if applicable)
- ☐ Vendor's proposal/quote (if applicable)
- ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☐ Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
- ☐ Other supporting documentation

4. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:

(Vendor Name): Opex Solutions, Inc. for

(Description of Procurement): Professional services contract for Total Productive Maintenance and Asset Reliability training and consulting

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$ _____

☒ This is a multi-term contract request for 36 (# months for base term) in the amount of \$300,000 with 2 (# of renewal options) for \$100,000 each for a total contract amount of \$500,000.

Recommended
Certification

Rich CL 9/11/18
Originator Date

Approved
Certification

TDM 9/12/2018
Department Director or designee Date

Sec COE from 11/7/2017 signed 7/16/18
Assistant City Manager / General Manager Date
or designee (procurement requiring Council approval)

Purchasing Office
Review

Kim Larsen 9/13/2018
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review
(If required due to signature authority level)

Purchasing Officer or designee Date



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 11/07/2017

DEPT: AWJ

TO: Purchasing Officer or Designee

FROM: Bruce Coe

BUYER: Darrell Richmond

PHONE: (512) 972-0289

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality

☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents

☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property

☒ a procurement for personal, professional, or planning services

☐ a procurement for work that is performed and paid for by the day as the work progresses

☐ a purchase of land or right-of-way

☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

☐ a purchase of rare books, papers, and other library materials for a public library

☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements

☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Personal Services: OpEx Solutions, Inc. (Martin Nazareth, Senior Consultant) will provide training, facilitation and coaching services for the design, implementation and deployment of an Asset Reliability and Total Productive Maintenance (TPM) program in the Austin Water Operations Treatment Program Area.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

#4. Please see attached memo.

#5. OpEx Solutions (Martin Nazareth, Senior Consultant) has worked with Austin Water Treatment from 2014 – 2017 to help design, plan, and implement pilot Total Productive Maintenance (TPM) programs at the South Austin Regional (SAR) and Walnut Creek wastewater treatment plants, training all levels of staff and conducting TPM projects in Lift Stations 1 & 2 (SAR), Train C Blowers (SAR), Blowers #1 – 4 (Walnut Creek). Teams at SAR expanded the program to include Re-Use Reclaimed Water Pump Station, Return Activated Sludge (RAS) Pumps and Waste Activated Sludge (WAS) Pumps. During these projects Mr. Nazareth delivered training that was specifically designed for AW staff and provided consulting guidance specifically targeted at AW equipment and processes. Mr. Nazareth possesses a Master of Science in Industrial Engineering from the University of Texas at Austin, is a certified Project Management Professional (PMP) and an Industry Advisory Board Member of Institute of Industrial Engineers.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with OpEx Solutions, Inc. for 3 years with 2 1-year extensions which will cost approximately \$500,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification




Originator

7/11/18

Date


Approved
Certification



Department Director or designee

7/11/2018

Date


Assistant City Manager / General Manager or designee (if applicable)

7/16

Date

Purchasing Review
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013



MEMORANDUM

To: Georgia Billela, Procurement Specialist III, Financial Services
From: Rick Coronado, P.E., Assistant Director, Austin Water *Rice*
Date: July 12, 2018
Subject: Professional Services for Asset Reliability and Total Productive Maintenance Consulting/Training

OpEx Solutions has worked with Austin Water Treatment from 2014 to the present to conduct a pilot program for Asset Reliability (AR) & Total Productive Maintenance (TPM) within treatment plant operations. OpEx Solutions successfully provided specifically designed training for over 100 staff members. Continued successful deployment of this program and training across the entire Treatment Program will improve early intervention of equipment failures resulting in improved equipment performance, reducing unscheduled downtime, extending the life of critical equipment resulting in a reduction in overall O&M costs.

Austin Water seeks to contract with OpEx Solutions, Inc. to assist with consulting, facilitation and training Treatment staff in the design and implementation of the AR & TPM program within water and wastewater treatment facilities. OpEx Solutions will provide training sessions with all levels of Treatment staff from senior management to frontline O&M personnel, and provide coaching and guidance to Treatment management during the implementation and deployment of the program.

Austin Water expects that billings for this professional service direct contract with this consultant will not exceed \$100,000 per year for 3 years (\$300,000) with 2 extension periods at \$100,000 each (\$200,000) after the contract is executed. The total anticipated billings for this contract is not to exceed \$500,000 as reflected in the revised Certificate of Exemption form.

Should you have questions or comments, please do not hesitate to contact Bruce Coe at (512) 972-0289.

Concurrence by David Anders, Assistant Director
Financial Services | Austin Water

7/12/2018
Date

RECEIVED
2018 JUL 19 AM 10:57
AUSTIN WATER
ACCOUNTS PAYABLE

xc: Andres Ramirez, Supervisor, Supply Chain Management
Darrell Richmond, Contract Management Specialist III, Supply Chain Management
Bruce Coe, Business Process Consultant Senior, Operations



*Rec. 7/19/18
ADR*

MEMORANDUM

To: Georgia Billela, Procurement Specialist III, Financial Services
From: Greg Meszaros, Director, Austin Water
Date: February 13, 2018
Subject: Professional Services for Asset Reliability and Total Productive Maintenance Consulting/Training

Austin Water declares these professional services to assist with training and coaching staff in the deployment of an Asset Reliability (AR) and Total Productive Maintenance (TPM) program in the Operations (Treatment) Program Area to be a professional service exempt under Texas Local Government Code, Chapter 252.022 (a) (4) since the services being provided are of an intellectual nature, regarding special knowledge, experience, skills and education.

In 2017 Austin Water's executive management team adopted the Effective Utility Management (EUM) model as a framework to guide the utility's strategic approach over the next 3 to 5 year time frame. Developed through a collaboration of the Environmental Protection Agency and six national water and wastewater associations, the EUM model identifies 10 interrelated attributes of effectively managed water utilities. Austin Water will initially focus on four EUM attributes of Customer Satisfaction, Stakeholder Understanding and Support, Employee Leadership and Development and Infrastructure Stability. Austin Water has initiated "Focus 4" teams to lead utility efforts in these areas. Austin Water Treatment's AR & TPM program is linked to and will help drive and support the Infrastructure Stability goal of Driving Maintenance Excellence (See Figure 1). When successfully implemented the AR & TPM program will increase equipment reliability, reduce unscheduled downtime, improve the performance and extend the life of critical processing equipment in Austin Water's water and wastewater facilities, thereby substantially reducing maintenance costs and improving operational performance (See Figure 2).

Austin Water seeks to contract with OpEx Solutions, Inc. to assist with training and coaching Treatment staff in the design and implementation of the AR & TPM program within water and wastewater treatment facilities. OpEx Solutions will conduct Asset Reliability and TPM training sessions with all levels of Treatment staff from senior management to frontline O&M personnel, and provide coaching and guidance to Treatment management during the implementation and deployment of the program.

OpEx Solutions has worked with Austin Water Treatment from 2014 to the present to conduct a pilot program at the South Austin Regional (SAR) wastewater treatment plant, extend the TPM program to Walnut Creek wastewater treatment plant, and conduct a pilot program at Ullrich water treatment plant. Training over 100 staff members, including management and front-line personnel and conducting initial TPM projects on critical equipment including lift station pumps, process air blowers, lime slakers, re-use nonpotable water pumps, return activated sludge



The City of Austin is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable modifications and equal access to communications will be provided upon request.

pumps, and waste activated sludge pumps. During this initial implementation period OpEx Solutions successfully delivered training that was specifically designed for AW staff. Continued successful deployment of AR & TPM across the entire Treatment Program will improve early intervention of equipment failures resulting in improved equipment performance, reducing unscheduled downtime, extending the life of critical equipment resulting in a reduction in overall O&M costs.

Additionally, AW is a member of the CenTex OpEx Consortium, a group of local manufacturers and service providers who are a support network of organizations working to implement operational excellence methodologies (such as Asset Reliability and TPM). Martin Nazareth, President and senior consultant of OpEx Solutions, Inc., is the founder and director of the OpEx Consortium.

Martin Nazareth possesses a Master of Science in Industrial Engineering from the University of Buffalo (SUNY), is a certified Project Management Professional (PMP), and is an Industry Advisory Board Member of the Institute of Industrial Engineers. Mr. Nazareth was formerly the manager of global TPM implementation at Alcoa, Inc. and he has extensive experience in designing and implementing TPM systems in flow process industries such as petroleum refineries and chemical manufacturers. Mr. Nazareth is considered an expert in these areas and is a highly regarded, internationally known operational excellence consultant.

Austin Water expects that billings for this professional service direct contract with this consultant will not exceed \$100,000 per year for a contract period of 3 years with 2 extension periods after the contract is executed for anticipated billings not to exceed \$500,000.

Should you have questions or comments, please do not hesitate to contact Bruce Coe at (512) 972-0289.



Greg Meszaros, Director
Austin Water

cc: Rick Coronado, Assistant Director Austin Water Operations Program
Andres Ramirez, Supervisor, Contract Management
Darrell Richmond, Buyer Senior

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Kim Larsen/974-2261	PM Name/Phone	Darrell Richmond/972-0313
Sponsor/User Dept.	Austin Water	Sponsor Name/Phone	Li Yang/972-0328
Solicitation No	eCapris 126851 (Exemption Request)	Project Name	Total Production Maintenance Program
Contract Amount	\$100,000yr/\$500,000 5-yr	Ad Date (if applicable)	N/A - Prof Svc Exempt
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Consulting services for the design and implementation of an asset reliability and Total Productive Maintenance program to incorporate best practices of effective water utilities and to create a framework to guide water utilities in continuous improvement methodologies.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Previous contract processed as a Professional Service Exemption; no Goal Determination is in the contract file. (PA160000017).			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
92440 - INSTRUCTOR-LED, CLASSROOM TRAINING (TECHNICAL) (100%)			
Kim Larsen		8/16/2018	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	8/20/2018	Date Assigned to BDC	8/20/2018
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

There are 3 MBE and 3 WBEs available for this project.

Subcontracting Opportunities Identified

There are no subcontracting opportunities identified.

Sonya Powell

SMBR Staff

Sonya Powell

Signature/ Date

8/20/18

SMBR Director or Designee

JP

Date

8/22/18

Returned to/ Date: